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281305Z Feb 05

ACTION AF-00

INFO	LOG-00	NP-00	AID-00	AMAD-00	CIAE-00	INL-00	USNW-00
	DODE-00	DS-00	EB-00	UTED-00	VC-00	H-00	TEDE-00
	INR-00	IO-00	L-00	VCE-00	NSAE-00	OIC-00	PA-00
	GIWI-00	PRS-00	P-00	SP-00	STR-00	TRSE-00	FMP-00
	R-00	DSCC-00	PRM-00	DRL-00	G-00	SAS-00	/000W
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FM AMEMBASSY GABORONE  
TO SECSTATE WASHDC 1785  
INFO SOUTHERN AFRICAN DEVELOPMENT COMMUNITY  
HQ USEUCOM VAIHINGEN GE  
NSC WASHDC

UNCLAS GABORONE 000294

SIPDIS

SENSITIVE

AF/S FOR DIFFILY

E.O. 12958: N/A

TAGS: PHUM PGOV BC

SUBJECT: COURT RULES IN FAVOR OF CRITICAL ACADEMIC

REF GABORONE 286

1. (SBU) Summary: On February 28, Botswana's High Court ruled in favor of embattled academic and critic of the GOB Prof. Kenneth Good by rejecting the Attorney General's arguments that the court had no authority to issue an interdict against the state. Judge Sapire issued an order granting Good temporary relief by barring the Government from enforcing its deportation order and giving Good approximately four weeks to initiate proceedings for substantive relief (i.e. to file a case alleging that the deportation order was unlawful or unconstitutional). This ruling underscores the independence of the judiciary in Botswana and opens the executive to the prospect of new limits on its far-reaching powers, thereby challenging a pillar of Botswana's political culture. End Summary.

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COURT TO HEAR GOOD'S CASE AGAINST GOB  
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2. (U) On February 28, Botswana's High Court ruled against the preliminary arguments of the Attorney General's Chamber that the court acted outside its authority by issuing on February 19 an interdict against the state's order of deportation against Professor Kenneth Good of February 18. Judge Sapire cited Section 18 of the Botswana Constitution, which enshrines the right of an individual to apply to the High Court if one's constitutional rights, including the freedom of expression, allegedly have been violated. Section 18 also grants the High Court the authority to make such orders at it deems appropriate in order to secure the enforcement of an individual's constitutional rights. Consequently, the Judge granted Good interim relief by barring the Government from deporting him while his order remained in effect to enable Good to remain in Botswana and challenge the deportation order.

3. (U) According to Judge Sapire's order, Good's attorneys have until March 30 to initiate proceedings seeking substantive relief from the Government's deportation order (i.e. file a case alleging that the deportation order was unlawful or unconstitutional). As required by law, Good's attorneys notified the Attorney General on February 21 of their intent to institute such proceedings. If the Attorney General's Chamber waives the waiting period, Good's attorneys must institute proceedings within one week of the date of that waiver. Failing this, the provisions of the court order will expire and the state will be free to deport Good.

4. (SBU) Joao Salbany, a member of Good's legal team, told PolOff that he and his colleagues plan to utilize the full time allotted to them under the court order before instituting proceedings. Salbany suspected that the Attorney General's Chamber might attempt to waive the waiting period in order to speed the case along. Good's attorneys would challenge the Government's right to do this but would be prepared to commence early in any event, he said.

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LARGE CROWD SUPPORTS GOOD  
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15. (U) A large crowd again turned out in support of Professor Good to hear the judge's ruling. In addition to students and faculty from University of Botswana, local and some international press were present, including journalists from South Africa, the Netherlands and Australia. A triumphant Good and his attorneys lingered outside the courtroom to express confidence in their case.

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UNIVERSITY RESISTED PRESSURE TO FIRE GOOD?  
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16. (SBU) According to a colleague of Prof. Good's from the University of Botswana's Department of Government and Public Administration, the GOB had pressured the university not to renew Good's contract when it was up for renewal last year. Our interlocutor said that the University had rebuffed this infringement on its independence and renewed Good's contract. Even if this as yet uncorroborated accusation is not accurate, Good's unpopularity with the ruling party has been beyond doubt for years. The University's decision to renew his contract in spite of this illustrates its independence from the Government.

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RULING TO CHALLENGE BOTSWANA'S POLITICAL CULTURE  
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17. (SBU) A senior official of the ruling Botswana Democratic Party told PolOff and Pol Assistant on February 24 that many of his party colleagues feared that a ruling in Good's favor would have dangerous repercussions for governance in Botswana. They were concerned, he said, that if the court could suspend the enforcement of a state order, the government would hesitate to make any decision worrying whether it would be overruled by the judiciary. This comment demonstrates the degree to which the power of the executive has become entrenched in Botswana, so much so that the idea of accountability to the people and the constitution through the courts seems an alien notion.

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COMMENT  
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18. (SBU) Today's ruling confirms that Botswana enjoys an independent judiciary capable of protecting an individual's constitutional and democratic rights. Likewise, Good's continued employment by the University of Botswana despite his trenchant criticism of the Government signifies that the Government's powers are not unlimited. Nonetheless, the executive enjoys considerable powers relative to its citizens and to the other branches of government. Like the controversy surrounding the location of a second university, this legal dispute will advance public discussion of presidential powers. It has the potential to rein in the disproportionate-- to the other branches of government-- exercise of executive power.  
HUGGINS

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